

UNITED STATES DISTRICT COURT
(DISTRICT OF MASSACHUSETTS)

CIVIL ACTION NO. 05-11697 GAO

MARILYN KUNELIUS,)
PLAINTIFF)
)
V.)
)
TOWN OF STOW separately, A)
PARTNERSHIP OF UNKNOWN NAME)
BETWEEN TOWN OF STOW and THE)
TRUST FOR PUBLIC LAND, THE)
TRUST FOR PUBLIC LAND separately)
and CRAIG A. MACDONNELL, in his)
individual capacity,)
DEFENDANTS.)

Plaintiff's Automatic Disclosure Statement

Pursuant to Fed. R. Civ. P. 26(a)(1) and L.R. Mass. 26.2, plaintiff Mrs. Marilyn Kunelius makes the following disclosure of discoverable information. Kunelius retains the right to amend or supplement this disclosure statement as appropriate.

Individuals likely to have discoverable information in support of Plaintiff's claims

Peter A. Kachajian, Jr., Esq.
292 Main Street
Northborough, MA 01532
Tel. (508) 393-6279

Topic of testimony: Compliance with notification of Town of Stow relative to potential sale of Kunelius' property and matters relating to thereto including the exercise the right of first refusal

Mrs. Marilyn Kunelius
635 Stow Road
Stow, ME 04037

Topic of testimony: Matters related to the instant case

Craig MacDonnell
Trust for Public Land
33 Union Street, 4th Floor
Boston, MA 02108

Topic of testimony: Matters related to TPL's involvement in the instant case

Keeper of Records
Trust for Public Land
33 Union Street, 4th Floor
Boston, MA 02108

Topic of testimony: Financial status and condition of TPL during times relevant to the instant litigation.

Chris Scott Hansen, owner
Cohousing Resources, LLC
9813 NE Murden Cover Road
Brainbridge Island, WA 98110
Tel.: (206) 842-9160

Topic of testimony: Matters related to negotiation and execution of P&S Agreement

James Broothroyd
Century 21 Classic Properties
42 Summer Street
Maynard, MA 01754

Topic of testimony: Matters related to negotiation and execution of P&S Agreement

David Norris
635 Stow Road
Stow, ME 04037

Topic of testimony: Matters related to attendance of meeting between the Plaintiff, TPL and others concerning TPL's efforts to acquire the Plaintiff's property

Robert Wilber
Community Preservation Committee
288 Red Acre Rd
Stow, MA 01775

Topic of testimony: Matters related to meeting by Community Preservation Committee and TPL

Edwin Ross Perry, Jr.
4 Circuit Drive
Stow, MA 01775

Topic of testimony: Matters related to the Town of Stow's involvement in the right of first refusal, negotiation re: same, relationship with TPL, due diligence undertaken by the Town of Stow

30(b)(6) deponent for
The Town of Stow Board of Selectmen
380 Great Rd. Town Hall
Stow, MA 01775

Topic of testimony: Matters relating to the Town of Stow's involvement in the right of first refusal, negotiations re: same, the Town of Stow's relationship with TPL, the Town of Stow's due diligence undertaken by the Town of Stow

Greg Jones, a former Selectman of the Town of Stow
61 Sudbury Rd.
Stow, MA 01775

Topic of testimony: Matters relating to exercise of right of first refusal and discussions and arrangements between the Town and TPL.

Serena Furman
Red Acre Rd.
Stow, MA 01775

Topic of testimony: Matters relating to Friends of Red Acre and funding for TPL's purchase of Kunelius' property any matter relating to the instant litigation

Linda Hathaway
Town Clerk
Town of Stow
380 Great Rd. Town Hall
Stow, MA 01775

Topic of testimony: TPL's and MacDonnell's presentation of TPL to the Town of Stow and terms of Town's and TPL's arrangements or business deal.

30(b)(6) deponent of the Town of Stow

Topic of Testimony: Matters related to how the Town of Stow decided to assign the right of first refusal to the Trust for Public Land, how the Town of Stow was to fund or contribute the purchase of the Kunelius property, what role TPL played in the Town of Stow's assignment of the right of first refusal to TPL including when TPL became involved in the evaluation of the Kunelius property, what role TPL played in drafting of a warrant for town meeting where said warrant involved Kunelius property

30(b)(6) deponent for the Trust for Public Land

Topic of Testimony: Matters related to Funding for the purchase of the Kunelius property, TPL's role in assisting the town in the evaluation of the Kunelius property, TPL's role in assisting time in the town's due diligence in order to assign the right of first refusal to TPL, TPL's

role in assisting in drafting and/or presentation of a warrant for a town meeting, the date that TPL became involved in the evaluation of Kunelius property, all matters relating to meeting, negotiations and instructions and assistance to the Friends of Red Acre's effort to raise funds, matters relating to TPL's appraisal or estimation of value of Kunelius property prior to and subsequent to the exercise of the right of first refusal and such other matters as will be described on Exhibit A to the notice of 30(b)(6) deposition.

Documents in Kunelius' possessions, custody or control which Kunelius may use to support her claims or defenses

The following is a description by category and location of all documents, data, compilations and tangible things that are in the possession, custody and control of the Plaintiff which the Plaintiff may use in support of its claims or defenses.

At the offices of Michael C. McLaughlin, One Beacon Street, 33rd Floor, Boston, MA, is the entire file of Mrs. Marilyn Kunelius in connection with the sale of Mrs. Kunelius' property, the Town of Stow exercise of the right of first refusal and assignment of same to the Trust for Public Land, and the Trust of Public Land's exercise of the right of first refusal and its attempts to negotiate the terms of P&S agreement well as, correspondence to Mrs. Kunelius' broker and other correspondence to various attorneys representing the Town of Stow, the Trust for Public Land. (*See* Exhibit A).

Damages claimed by Mrs. Kunelius

Mrs. Kunelius has suffered damages in an amount \$1,116,900.00 plus interest and tax related benefits and costs which accrued from the scheduled closing date of September 26, 2006 as a result of the Town of Stow's and the Trust for Public Land's breach of their obligation under the terms of the P&S Agreement.

In addition, the Plaintiff has suffered damages resulting from the unfair and deceptive trade practices in treble amount of \$1,116,900 (\$3,507,000) plus attorney's fees

and interest accruing from September 26, 2000 as due to unfair and deceptive Trust for Public Land and the Town of Stow entering into a partnership's behavior including attorney's fees that knew or should have known would necessarily have to have been incurred by the Plaintiff in enforcing her contractual rights under P&S Agreement.

The Plaintiff has not yet determined the amount of attorney's fees and since such legal fees are ongoing the Plaintiff retains the right to amend or supplement this disclosure statement as appropriate.

The Plaintiff has suffered damages in an amount to be determined at the time of trial since the damages result from intentional interference of the partnership of the Town of Stow and Trust for Public Land, the Trust for Public Land and Craig A. MacDonnell, individually, in an advantageous or contractual relationship between Mrs. Kunelius and Cohousing. Plaintiff estimates said damages to be approximately \$1,116,900 plus interest and tax related benefits and attorney's fees and tax related benefits and costs. Since the damages related to the intentional interference in an advantageous or contractual relationship are ongoing the plaintiff reserves the right to amend or supplement this disclosure as appropriate.

The Plaintiff has suffered damages in an amount to be determined at the time of trial since the damages result from ongoing civil rights violations under the provisions of 42 U.S.C. §1983, §1988 and from violations of the United States Constitution Fifth and Fourteenth Amendments. Plaintiff estimates said damages to be approximately \$500,000. Since the damages related to the violations of 42 U.S.C. §1983, §1988 and of the United States Constitution Fifth and Fourteenth Amendments are ongoing the plaintiff reserves the right to amend or supplement this disclosure as appropriate.

The Plaintiff has suffered damages in an amount to be determined at the time of trial since the damages result from ongoing misrepresentation and fraud of the Partnership between the Town of Stow and the Trust for Public Land, the Trust for Public Land, separately and Craig A. MacDonnel, individually. Plaintiff estimates said damages to be approximately \$1,116,900 plus interest and tax related benefits and costs. Since the damages related to misrepresentation and fraud are ongoing the Plaintiff reserves the right to amend or supplement this disclosure as appropriate.

Insurance agreements

None applicable

Expert witnesses to be called by the Plaintiff

Plaintiff has not yet determined if she will call any witness as an expert at trial. The Plaintiff will supplement this statement, as appropriate, under the Federal Rules of Civil Procedure.

Respectfully submitted,

Marilyn Kunelius,

By Her Attorney

Dated: November 9, 2006 By: /s/ Michael C. McLaughlin, Esq.
Michael C. McLaughlin (BBO# 367350)
Law Offices of Michael C. McLaughlin
One Beacon Street, 33rd Floor
Boston, MA 02108
(617) 227-2275

CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 9, 2006.

/s/Michael C. McLaughlin

Michael C. McLaughlin

- Standard Form Purchase and Sale Agreement between Marylin Kunelius and Cohousing Resources, LLC
- a letter from Peter A. Kachajian and Paul Broothroyd dated February 20, 2004 re: 142-144 Red Acre Road, Stow, MA
- a facsimile from Jonathan Klein to Peter A. Kachajian dated January 10, 2003 re: Mosaic Commons
- a letter from Peter A. Kachajian to Board of Selectmen dated January 13, 2003 re: Withdrawal of Notice of Intent for Sale of Property Located at 142-144 Acre Road
- an email from Chris ScottHanson to Peter A. Kachajian dated October 19, 2002 re: MC-Public Relations & Stow
- an email from Chris ScottHanson to Peter A. Kachajian dated September 27, 2002 re: MC – Stow Property P&S
- a facsimile from Chris ScottHanson to Peter A. Kachajian and James Boothroyd date illegible re: P&S and Promisory Note on Kunelius Property
- a facsimile from Chris ScottHanson to James Boothroyd dated September 24, 2002 re: Stow Offer
- a facsimile from Peter Kachajian to Kim Shute re: Letters of Intent and Confidentiality Dated September 18, 2002
- a facsimile from Peter Kachajian to Chris re: Letters of Intent and Confidentiality Dated September 20, 2002
- a facsimile from Johnathan Klein to Peter Kachajian re: Letters of Intent and Confidentiality dated September 20, 2002
- a facsimile from Peter Kachajian to Johnathan Klein to re: Letters of Intent and Confidentiality dated September 20, 2002
- a facsimile from Jim (Century 21) to PAK Jr. dated September 13, 2002
- Letter of Intent
- a facsimile from Jim to Petr re: copy of deposit check not dated
- an email from Chris ScottHanson to creativejim0717@aol.com dated January 12, 2004, re: Meeting

- a facsimile - Promisory Note signed by Cohousing dated July 25, 2002 and Letter from Mrs. Kunelius re: To My Fellow Stow Voters
- copy of return receipts of Planning Board; Stow – Board of Selectmen; Board of Assessors
- copy of certified mail receipts to Planning Board; Stow – Board of Selectmen, Board of Assessors Conservation Commission; and Town of Stow.
- copy of return receipts of Town of Stow, Board of Selectmen c/o Town Clerk; Town of Stow, Board of Selectmen
- copy of return receipts (Peter Chistianson, Wilson & Orcutt, P.C., Edmond Brown, Timoty Reed, David Cobb & Karen Sommerland; Trust for Public Land, Craig MacDonnel; Board of Selectman, Kathy Farrel, Chairman; Thomas Porcher & Catherine Leonard; Eye of the Storm c/o Nina Arbella; Robert Wilber; Michael Labosky & Erica Nilsson; Allen Ransland & Sharlet Ramsland [sent to Attorney, name illegible])
- a letter from Town of Stow Board of Selectmen to Mrs. Kunelius dated February 12, 2003 re: Land of Marily Kunelius located at 142-144 Red Acres Road, Stow
- Assignment and Acceptance between the Town of Stow and Trust for Public Land dated February 11, 2003 (Acceptance by Trust for Public Land dated February 12, 2003)
- A letter from Trust for Public Land to Mrs. Kunelius dated February 13, 2003 re: Exercise of Right of First Refusal, Land in Stow
- a copy of an envelope from Trust for Public Land to Peter A. Kachajian dated February 13, 2003
- Town of Stow Board of Selectmen's letter to Peter A. Kachajian, Jr., Esq., dated September 24, 2003 re: Kunelius property 142 & 144 Red Acre Road
- Kunelius Property Workout
- from Christ ScottHansen to Jim Boothroyd dated December 12, 2003 re: Red Acre Road Property
- a facsimile from Jim to PAK dated November 25, 2003
- news paper articles
- a letter from TPL to Donald Hyde of Stow Zoning Board of Appeals dated September 25, 2003 re: Pending Application for Variances for Property at 144 Red Acre Road
- TPL's Condensed Consolidated Statemet of Financial Position

- letter from Craig MacDonnel to Peter A. Kachajian dated July 6, 2004 re: Kunelius property
- a letter from Craig MacDonnel to Peter A. Kachajian dated September 9, 2003 re: Kunelius property
- a letter from Peter A. Kachajian, Jr. to Kathy Farell dated September 12, 2003 re: Kunelius property 142 & 144 Red Acre Road, Stow, Ma
- a facsimile from Paula Bruno to Atty. Peter Kachajian dated September 24, 2003 re: Kunelius property
- a facsimile from Jacob C. Diemert, Esq. to Peter A. Kachajian, Jr. dated July 23, 2003 re: Kunelius Property – Town of Stow
- a facsimile from Jacob C. Diemert, Esq. to Peter A. Kachajian, Jr. dated July 10, 2003 re: Kunelius Property – Town of Stow
- a facsimile from Jacob C. Diemert, Esq. to Peter A. Kachajian, Jr. dated June 24, 2003 re: Kunelius Property – Town of Stow
- a facsimile from Linda Hathaway, town clerk to Jake Diemetr (Wilson & Orcut) including warrant articles 35 + 36, motion articles 35+36, town meeting minutes recorded by clerk re: Kunelius property
- a letter from Peter A. Kachajian to Chris Scott Hansen dated February 14, 2003 re: Kunelius Red Acre Road, Stow, MA
- a letter from Peter A. Kachajian to Town of Stow, Board of Selectmen, dated October 16, 2002, re: Notice of Intent for sale of property located at 142 – 144 Red Acre Road, Stow, MA
- a letter from Peter A. Kachajian to Town of Stow, Board of Selectmen, dated October 16, 2002, re: Notice of Intent for sale of property located at 142 – 144 Red Acre Road, Stow, MA
- a copy of certified mail receipts – Planning Board, Stow – Board of Selectmen, Board of Assessors, and Conservation Commission
- a copy of return receipts – Town of Stow Board of Assessors, Planning Board, Tow of Stow Board of Selectmen, and Conservation Commission
- Minutes Board of Selectmen November 25, 2003

- a facsimile from TPL (Craig MacDonnell) to Peter A. Kachajian dated July 6, 2004 including Exhibit A and B
- a facsimile from TPL (Craig MacDonnell) to Peter A. Kachajian dated September 9, 2003
- a letter from Denise A. Pelletier, regional counsel for TPL, to Donald Hyde, Chairman Zoning Board of Appeals re: 144 Red Acre Road dated August 7, 2003
- an email from Denise A. Pelletier to A. Kachajian re: Variance Case dated August 5, 2003
- a facsimile from Chris LaPointe to Jim Boothroyd re: Kunelius Variance Application dated May 5, 2003
- a TPL information letter to Resident of 142 Red Acre RD, re: Help Create Affordable Housing and Protect Open Space for Stow
- a facsimile from Craig to Peter dated May 16, 2003
- a facsimile from Denise A. Pelletier to Peter A. Kachajian dated re: Kunelius Property, Stow, MA, March 29, 2003
- a facsimile from Robin/PAKJr. To Boothroyd re: Kunelius dated April 4, 2003
- Article 5, Friend of Rec Acre – David Cobb re: Kunelius Farm, Project Fact Sheet
- a list of Friends of Red Acre (FORA) and Supporters
- a facsimile from JAB to PAK dated September 5, 2003
- a facsimile from JAB to PAK dated September 5, 2003
- an article from the *Stow Paper* dated September 26, 2006
- an article from *The Beacon Villager* dated September 11, 2003
- an article from *West Daily News* dated August 25, 2003
- an article from the *Stow Paper* dated May 9, 2003
- an article from *The Boston Globe* not dated
- an article from *The Beacon Villager* dated February 27, 2003

- an article from unknown newspaper dated February 16, 2003
- an article from *The Boston Globe* dated February 9, 200?
- an article from *The Boston Globe* dated January 30, 2003
- an article from *The Beacon Villager* dated January 30, 2003
- an article from *The Boston Globe* dated January 30, 2003
- an article form unknown newspaper undated re: Kunelius land eyed for 40B
- an article from *The Beacon Villager* dated January 23, 2003
- an article form unknown newspaper undated re: Vote to continue legacy of caring
- an article form unknown newspaper undated re: Housing not good use of the property
- an article from *The Beacon Villager* undated re: Kunelius parcel should be saved
- an article form unknown newspaper undated re: Join neighbors in vote to save parcel
- an information sheet undated re: A home for eye of the storm equine rescue
- an article from *The Boston Globe* dated January 16, 200?
- an article from *The Boston Globe* dated January 30, 2003
- an article from *The Beacon Villager* dated January 16, 2003
- an article from *The Boston Globe* dated January 16, 200? (year illegible)
- an article from *The Boston Globe* dated November 7, 200? (year illegible) re: Group envisions al old fashioned village
- an article from *The Boston Globe* dated November 7, 200? re: Group envisions al old fashioned village
- an article from the *Stow Paper* undated re: Kunelius Property P&S Agreement
- an article from *The Boston Globe* dated October 31, 2002
- an article from *The Beacon Villager* dated October 31, 2002
- an article from *The Beacon Villager* dated September 26, 2002

- an article from unknown newspaper undated re: Kunelius property faces 40B
- an article from *The Boston Globe* dated September 26, 2002
- an article from unknown newspaper undated re: Stow water source has officials thinking revenue
- an article from *The Boston Globe* dated September 26, 2002